REMARKS

In 1/26/2004 final office action, Examiner rejects claims 20-21, 23-24, 26, 28 and 30-33 under 35USC102e per Bursell et al. (US.PAT 5993001); claims 22, 25, 27, 29 and 34 under 35USC103a per Bursell et al and Kennedy III et al (US.PAT 6301480); and claims 35-37 under 35USC103a per Bursell et al and Coli et al (US.PAT 6018713).

Applicants respectfully submit that Examiner's primary reference (Bursell) in significant part neither discloses nor suggests any system or method having "...**mobile** communications unit physically associated with a remote patient for monitoring at least one medical vital sign..." among other things. And more importantly, despite Examiner's contention in the final office action to the contrary, Applicants note that Bursell's data collection or image acquisition unit 12 in fact is substantially immobile (see column 7, line 60 to column 8, line 20.) Clearly as shown in Fig. 1, Bursell contemplates that unit 12 includes video cameras that are mounted at one or more fixed sites, but certainly not intended to be mobile in any substantial manner. Bursell's remote examination approach necessarily employs fixed sites for image acquisition, since this reference only intends to provide stereoscopic imaging system for retinal examination. This motivation by Bursell to examine retina remotely at fixed examination sites does not reasonably or practically disclose or suggest that such data collection / image acquisition unit 12 be mobile in any way, especially via a mobile communications unit that is physically associated with remote patients.

Accordingly upon looking at Applicants' invention as a whole, and because the Bursell reference fails to teach certain limitations of Applicants' patent claims as asserted by Examiner, particularly the limitation of a **mobile** communications unit physically associated with a remote

patient, then Examiner's rejection challenging validity of Applicants' claims should be withdrawn. See: *Panduit Corp. v. Dennison Mfg. Co.,* 774 F.2d 1082, 227 USPQ 337 (Fed. Cir. 1985), *remanded,* 475 U.S. 809, 106 S.Ct. 1578, 229 USPQ 478 (1996), *on remand,* 810 F.2d 1561, 1 USPQ3d 1593 (Fed. Cir. 1987), *cert. denied,* 481 U.S. 1052 (1987); also, *WMS Gaming Inc. v. International Game Technology,* 184 F.3d 1338, 51 USPQ2d 1385 (Fed. Cir. 1999).

Regarding the Kennedy III reference, Examiner proposes to combine this reference for system and method for communicating using voice and data networks with the Bursell reference. However, Applicants respectfully submit that there is no suggestion or motivation to combine both such prior art references to one of ordinary skill in the art, and thereby reveal that one of such skill would have reasonable expectation of success in carrying out Applicants' invention. See: *Northern Telecom Inc. v. Datapoint Corp.* 908 F.2d 931, 15 USPQ2d (Fed. Cir. 1990), *cert. denied,* 298 U.S. 920 (1990); also, *In re Vaeck,* 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

As mentioned above because Bursell clearly discloses only data collection or image acquisition unit 12 for sole purpose of remote examination of retina at fixed sites, there is no disclosure or suggestion to motivate in any clear and particular way that such fixed unit 12 by Bursell be considered for combination with Kennedy's mobile communication system, which reference is directed to a different, mobile-communication purpose. See: *In re Dembiczak,* 175 F.3d 994, 50 USPQ2d 1614 (Fed. Cir. 1999); also, *In re Clay,* 966 F.2d 656, 23 USPQ2d 1058 (Fed. Cir. 1992).

Regarding the Coli reference, Examiner proposes to combine this reference for integrated system and method for ordering and cumulative results reporting of medical tests

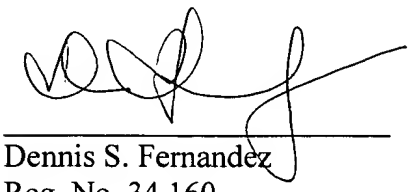
with the Bursell reference. Again Applicants respectfully submit that not only is there no suggestion or motivation to combine both such prior art references to one of ordinary skill in the art, and thereby reveal that one of such skill would have reasonable expectation of success in carrying out Applicants' invention, but upon looking at Applicants' invention as a whole, and because neither reference teaches or suggests limitations of Applicants' patent claims as asserted by Examiner, particularly the limitation of confirming remote patient identity by processing a visual image of the remote patient using adaptive or neural learning software to recognize such patient, then Examiner's rejection challenging validity of Applicants' claims should be withdrawn.

In particular Applicants note in significant part that Bursell neither discloses nor suggests any processor that **confirms remote patient identity by processing a visual image of the remote patient using adaptive or neural learning software to recognize such patient**. In fact Bursell merely examines patient retina, without actually confirming or recognizing patient identity. Furthermore Coli neither discloses nor suggests any processor that confirms remote patient identity by processing a visual image of the remote patient using adaptive or neural learning software to recognize such patient, let alone enable health-care billing to such identified or recognized patient.

Hence Applicants respectfully submit that Examiner cannot properly use hindsight reconstruction to pick-and-choose among isolated disclosures in the prior art, such as Bursell, and Kennedy or Coli, to deprecate Applicants' claimed invention, i.e., by gathering such prior art retroactively with the claimed invention in mind. See: *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); also, *Pentec Inc. v. Graphic Controls Corp.*, 776 F.2d 309, 227 USPQ 766 (Fed. Cir. 1985).

Applicants submit that claims are in allowance condition, and respectfully request rejections be reconsidered and withdrawn.

Respectfully submitted,



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